

Introduced by Senator Denham

February 17, 2005

An act to amend Sections 209 and 653f of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 449, as introduced, Denham. Crimes.

Existing law provides that any person who kidnaps or carries away any individual to commit certain offenses is punishable by life in prison with the possibility of parole.

This bill would add to the list of offenses, certain sex offenses committed against specified minors.

By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law provides that every person who, with the intent that the crime be committed, solicits another to commit specified sex offenses is punishable by imprisonment in the state prison for 2, 3, or 4 years.

This bill would expand that crime to include persons who, with the intent that the crime be committed, solicits another to join in the commission of those specified offenses.

Existing law establishes the offense of lewd or lascivious acts upon a child under the age of 14 years, as specified, punishable by imprisonment in the state prison for 3, 6, or 8 years.

This bill would establish the offenses of soliciting a person under the age of 14 years, or soliciting a person 14 or 15 years of age who is at least 10 years younger than the person, to join in the commission of that crime. The bill would provide that soliciting for that crime, as specified, a person under 14 years of age would be punishable by a term of imprisonment in the state prison as specified. The bill would further provide that soliciting for that crime, as specified, a person

who is 14 or 15 years of age and who is at least 10 years younger than the person would be punishable by a term of imprisonment in a county jail, or in the state prison as specified.

By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 209 of the Penal Code is amended to
2 read:

3 209. (a) Any person who seizes, confines, inveigles, entices,
4 decoys, abducts, conceals, kidnaps or carries away another
5 person by any means whatsoever with intent to hold or detain, or
6 who holds or detains, that person for ransom, reward or to
7 commit extortion or to exact from another person any money or
8 valuable thing, or any person who aids or abets any ~~such act of~~
9 *those acts*, is guilty of a felony, and upon conviction thereof,
10 shall be punished by imprisonment in the state prison for life
11 without possibility of parole in cases in which any person
12 subjected to any ~~such act of those acts~~ suffers death or bodily
13 harm, or is intentionally confined in a manner which exposes that
14 person to a substantial likelihood of death, or shall be punished
15 by imprisonment in the state prison for life with the possibility of
16 parole in cases where no such person suffers death or bodily
17 harm.

18 (b) (1) Any person who kidnaps or carries away any
19 individual to commit robbery, rape, spousal rape, oral copulation,
20 *a violation of paragraph (1) of subdivision (b) of Section 288*,
21 sodomy, or sexual penetration in violation of Section 289, shall
22 be punished by imprisonment in the state prison for life with
23 possibility of parole.

(2) This subdivision shall only apply if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in ~~the~~ a county jail for 12 months. If the court grants probation without requiring the defendant to be confined in ~~the~~ a county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) Subdivision (b) shall not be construed to supersede or affect Section 667.61. A person may be charged with a violation of subdivision (b) and Section 667.61. However, a person may not be punished under subdivision (b) and Section 667.61 for the same act that constitutes a violation of both subdivision (b) and Section 667.61.

SEC. 2. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer, accept, or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by a fine of not more than ten thousand dollars (\$10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit, *or to join in the commission of*, rape by force or violence, sodomy by force or

1 violence, oral copulation by force or violence, or any violation of
2 Section 264.1, 288, or 289, shall be punished by imprisonment in
3 the state prison for two, three, or four years.

4 (d) (1) *Every person who, with the intent that the act be*
5 *committed and with the intent described in subdivision (a) of*
6 *Section 288, solicits a child who is under 14 years of age to join*
7 *in an act of lewd or lascivious conduct as described in*
8 *subdivision (a) of Section 288, is guilty of a public offense. A*
9 *person convicted under this paragraph shall receive the*
10 *punishment applicable to an attempt to commit the crime*
11 *described in subdivision (a) of Section 288.*

12 (2) *Every person who, with the intent that the act be committed*
13 *and with the intent described in subdivision (a) of Section 288,*
14 *solicits a child who is 14 or 15 years of age and at least 10 years*
15 *younger than the person to join in an act of lewd or lascivious*
16 *conduct as described in subdivision (a) of Section 288, is guilty*
17 *of a public offense. A person convicted under this paragraph*
18 *shall receive the punishment applicable to an attempt to commit*
19 *the crime described in paragraph (1) of subdivision (c) of Section*
20 *288.*

21 (e) Every person who, with the intent that the crime be
22 committed, solicits another to commit an offense specified in
23 Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health
24 and Safety Code shall be punished by imprisonment in a county
25 jail not exceeding six months. Every person, who, having been
26 convicted of soliciting another to commit an offense specified in
27 this subdivision, is subsequently convicted of the proscribed
28 solicitation, shall be punished by imprisonment in a county jail
29 not exceeding one year, or in the state prison.

30 This subdivision does not apply where the term of
31 imprisonment imposed under other provisions of law would
32 result in a longer term of imprisonment.

33 ~~(e)~~

34 (f) Every person who, with the intent that the crime be
35 committed, solicits another to commit an offense specified in
36 Section 14014 of the Welfare and Institutions Code shall be
37 punished by imprisonment in a county jail for not exceeding six
38 months. Every person who, having been convicted of soliciting
39 another to commit an offense specified in this subdivision, is
40 subsequently convicted of the proscribed solicitation, shall be

1 punished by imprisonment in a county jail not exceeding one
2 year, or in the state prison.

3 ~~(f)~~

4 (g) An offense charged in violation of subdivision (a), (b), ~~or~~
5 ~~(c)~~ (c), or (d) shall be proven by the testimony of two witnesses,
6 or of one witness and corroborating circumstances. An offense
7 charged in violation of subdivision ~~(d) or (e)~~ (e) or (f) shall be
8 proven by the testimony of one witness and corroborating
9 circumstances.

10 SEC. 3. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the
15 penalty for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition of a
17 crime within the meaning of Section 6 of Article XIII B of the
18 California Constitution.